



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

JAN 28 2015

OFFICE OF
WATER AND WATERSHEDS

Re: Consultation on Proposed Federal Rulemaking to Update Washington's Human Health Criteria

Dear Tribal Leader:

The U.S. Environmental Protection Agency (EPA) is initiating consultation and coordination with federally recognized tribes in Washington on a proposed federal rulemaking to amend the human health water quality criteria for Washington in the National Toxics Rule. The EPA is also inviting federally recognized tribes in the Columbia River Basin to participate due to shared waterbodies and downstream waters. We would like to offer you the opportunity to engage in government-to-government consultation with the EPA about our upcoming proposal should it be necessary for the EPA to proceed with a federal rulemaking.

Washington's existing criteria for the protection of human health were promulgated by the EPA in 1992 as part of the National Toxics Rule (40 CFR 131.36). The EPA is proposing to update these criteria to ensure that Washington residents are protected from exposure to toxic pollutants. The EPA intends to update the human health criteria to take into account the best available science, including local and regional information, and applicable EPA policies, guidance, and legal requirements.

The EPA recognizes its unique relationship with Tribal governments as set forth in the United States Constitution, treaties, statutes, executive orders, and court decisions. We also recognize the important role Tribes play in water quality protection in Indian Country and treaty-protected areas, including usual and accustomed fishing areas. Therefore, we would like to offer you the opportunity to consult on a government-to-government basis with the EPA regarding this proposed federal rulemaking to ensure that we fully consider the Tribe's interests in our decision.

If you would like to consult on the EPA's upcoming proposed federal rule to amend the National Toxics Rule for Washington, please contact Jim Woods at (206) 553-2871 or woods.jim@epa.gov by February 13, 2015. Also, please identify the Tribe's point of contact for planning the consultation and any policy that the Tribe may have regarding consultation with us. As part of this process, the EPA has scheduled a conference call with tribal technical staff on February 3, 2015, from 10:30 a.m.-12:00 p.m. Pacific Time to provide background information regarding the federal rulemaking and the tribal consultation process. The EPA will also be holding a tribal leadership meeting to discuss the federal rulemaking process with Region 10 Administrator, Dennis McLerran, on March 2, 2015, from 2:00 p.m.-4:30 p.m. Pacific Time at EPA Region 10, 1200 Sixth Ave, Seattle, WA. This timeframe will help ensure that we stay within a timeline that enables us to propose a federal rule by August 2015, if deemed to be

necessary. This consultation and coordination process will be conducted in accordance with the *EPA Policy on Consultation and Coordination with Indian Tribes* (<http://www.epa.gov/tp/consultation/consult-policy.htm>).

Whether or not you participate in this consultation process, you will still have the opportunity to provide input on the proposed rulemaking during the federal proposed rule public comment period. The proposed rule is expected to be published in the *Federal Register* as early as August 2015. Please note that there will be additional opportunities for tribal consultation should the EPA proceed with a final federal rule for Washington.

Also, the EPA encourages you to provide public comments directly to the Washington Department of Ecology on their proposed state rulemaking to adopt human health criteria. More information can be found on the following website:
<http://www.ecy.wa.gov/programs/wq/ruledev/wac173201A/1203inv.html>.

For more information on the EPA's proposed federal rulemaking and how it may interact with Ecology's state rulemaking process, please see the enclosed letter sent by the EPA Region 10 Administrator, Dennis McLerran to Ecology's Director Maia Bellon, dated December 18, 2014.

Please contact me at (206) 553-1855 or Jim Woods at (206) 553-2871 if you have any questions. We look forward to meeting with you and continuing the dialogue on this very important topic.

Sincerely,



Daniel D. Opalski, Director
Office of Water and Watersheds

Enclosure